IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No. 165 of 2007

(Old No. 1384/1986)

Shankar Mani Dangwal
Forester, Forest Department,
Uttarkash ...Appellant

Vs.

State of U.P. ...Respondent

Sri Lokendra Dobhal, learned counsel for the appellant.
Learned A.G.A. for the respondent.

Dated: November 13, 2007

Hon'ble B. C. Kandpal, J.

This criminal appeal arises out of the judgment and order date 7.5.1986 passed by Sessions Judge, Uttarkashi thereby convicting the appellant under Sections 436 and 426 I.P.C. and sentencing him to undergo two years R.I. and one month R.I. respectively.

Brief facts of the case, as per prosecution story, are that Amar Singh had a thatch (Gaushala) in Panchpalya Tok of village Sartali and was also in possession over the land surrounding it. On 17.12.1984 at about the time of noon the three accused namely Shankar Mani, Purna Nand and Ramlal accompanied by four other persons entered that thatch and set fire to the thatch causing a loss of Rs. 1000/-. The clothes and utensils had also been burnt therein. The accused also trampled down the wheat crop in the surrounding land causing a loss of Rs. 500/-. The complainant had residences in two villages and had gone away to

other village on that day. When he returned back on 18.12.1984, Uttam Singh and Ganu Ram informed him about the occurrence. He went to the spot on 19.12.1984 and saw the loss. On 20.12.1984, he started for Uttarkashi and lodged the complaint on 21.12.1984. The learned Magistrate examined the evidence under Sections 200 and 202 of Cr.P.C. and committed the accused to Sessions.

The prosecution examined Amar Singh PW-1, Ganu PW-2, Uttam Singh PW-3 and Bijendra Singh PW-4 as witnesses of the occurrence. That was the prosecution evidence on the record besides the complaint (Ex. Ka-1).

The accused denied having committed mischief by setting fire or by damaging the crop and alleged that the complaint had been lodged in order to bring pressure on them so that the employees of the Forest Department may not do anything against them.

The accused offered to produce defence evidence and produced copy of F.I.R. dated 26.7.84 (Ex. Kha-1) and the personal bond of Amar Singh therein (Ex. Kha-2), copy of F.I.R. dated 1.1.1985 (Ex. Kha-3) and personal bond of Amar Singh therein (Ex. Kha-4), copy of F.I.R. dated 26.7.84 (Ex. Kha-5), copy of Survey Map (Ex. Kha-6) and two certificates disclosing that the map had been acted upon (Ex. Kha-7 and Kha-8).

The trial court after hearing learned counsel for the parties and having perused the entire evidence available on record, convicted the accused Shanker Mani Under Sections 436 and 426 of I.P.C.

and sentencing him to undergo two years and one month R.I. respectively. The trial court further acquitted other accused persons namely Purna Nand and Ramlal of the charges levelled against them vide the same judgment and order dated 7.5.1986.

Feeling aggrieved by the aforesaid judgment and order, the appellant/Shankar Mani Dangwal has preferred this appeal before this Court.

Heard Sri Lokendra Dobhal, learned counsel for the appellant, learned A.G.A. for the respondent and perused the record.

The prosecution has produced four witnesses in this case i.e. Amar Singh PW-1, Gainu PW-2, Uttam Singh PW-3 and Bijendra Singh PW-4. The evidence of all these witnesses reveals that Amar Singh PW-1 could not see the actual occurrence. He claimed that the cattle thatch belongs to him, although it is defence of the appellant that the complainant was a trespasser and the Forest Department had already initiated the proceedings for his eviction from the land in question. The record also reveals that prior to this incident the report by the Forest Department was also lodged against Amar Singh PW-1 as well as Gainu PW-2. Amar Singh and Gainu obtained their bail in the cases which were lodged against them by the Forest Department. It is not disputed that the land over which the thatch existed was in the reserved forest, as has been stated by Gainu (PW-2). Gainu (PW-2) is the eye witness who has stated that he had seen the actual occurrence and also stated that it was Shankar Mani who ignited the fire by striking the

match stick. The sole testimony of Gainu does not find corroboration with the evidence of other witnesses produced by the prosecution. Amar Singh whose thatch was set to fire, is not eye witness of the occurrence and other witnesses Uttam Singh PW-3 and Bijendra Singh PW-4 have also stated in their deposition before the court below that they did not see the accused persons setting the fire. These witnesses have stated that it was Gainu PW-2, who told that the accused Shankar Mani set the thatch to fire. The testimony of Uttam Singh PW-3 and Bijendra Singh PW-4 was also not found reliable by the trial court itself. The evidence of these two persons is against the statement of Gainu PW-2, therefore, PW-3 and PW-4 are not the reliable witnesses and the trial court has rightly disbelieved the testimony of these two persons.

Now, the sole testimony of Gainu PW-2 is left and on the basis of sole testimony of Gainu PW-2, the conviction has been recorded by the trial court. The testimony of Gainu PW-2 also cannot be said to be reliable beyond reasonable doubt. Gainu PW-2 is the person against whom the report was lodged by the accused-appellant was well as other forest officers for his illegal encroachment over the land of Forest Department. The testimony of Gainu PW-2 also does not inspire confidence as he disclosed the fact of setting the thatch to fire by the accused in the evening to the wife of Amar Singh. It does not appeal to any reason that when actual incident took place in the noon at about 12, then what was the reason which obstructed Gainu (PW-2) from informing about the incident to the wife of Amar Singh after 6 or 7 hours. The evidence of Gainu

(PW-2) further is contradicted by his own statement as at one place he says that all the three witnesses set the thatch to fire and at other place he says that it was only Shankar Mani who set the thatch to fire by striking the match stick. It is worthy to mention here that rest of two accused persons have been given the benefit of doubt and they have been acquitted of the charges levelled against them by the trial court. Therefore, I am of the view that the conviction of the accused-appellant could not have been recorded by the trial court on account of sole testimony of Gainu (PW-2), which is not reliable beyond reasonable doubt. The testimony of Gainu (PW-2) is quite shaky and the conviction could not have been recorded on the basis of sole testimony.

The learned counsel for the appellant has cited before me the case of ***Joginder Singh and others vs. State of Punjab***, reported in ***1994 SCC (Cri) 46*** and contended that the evidence in the present case is highly unsatisfactory and on the basis of view taken by Hon'ble Apex Court in the above cited case, the reasoning for acquittal of the two accused on the same set of evidence applies to the present appellant as well. The facts of above cited case are completely applicable to the facts of the present case. In the above cited cast, the Hon'ble Apex Court found the conviction of three accused persons improper merely on the ground that they had motive to attack where the evidence of eye witnesses was found to be highly unsatisfactory and held that the reasoning for acquittal of five accused applied to the remaining three as well.

In the present case, the evidence of the eye witnesses was found to be highly unsatisfactory by

the trial court and the two accused were acquitted on the same set of evidence, therefore, the conviction of the accused-appellant is improper.

For the reasons stated above, I allow this appeal and set aside the judgment and order dated 7.5.1986 passed by Sessions Judge, Uttarkashi. The appellant is therefore acquitted of the charges levelled against him.

(B.C. Kandpal, J.)

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